

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**CYNTHIA A. LEIGHTY,**  
**Plaintiff,**

**v**

**COMMISSIONER OF SOCIAL SECURITY,**  
**Defendant.**

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) **2:10-cv-1022**  
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**MEMORANDUM OPINION AND ORDER OF COURT**

Pending before the Court are DEFENDANT’S OBJECTIONS TO THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION (Document No. 21). Plaintiff Cynthia A. Leighty (“Leighty”) has filed a response and the objections are ripe for disposition.

**Factual and Procedural History**

This Social Security Act appeal presents cross-motions for summary judgment based on the administrative record developed before the Administrative Law Judge (“ALJ”). In June 2011, this case was referred to United States Magistrate Judge Maureen P. Kelly for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.C and 72.D of the Local Rules for Magistrates. On October 3, 2011, Magistrate Judge Kelly filed a Report and Recommendation (“R & R”) which recommended that the ALJ’s decision be reversed and that: (1) Leighty’s motion be granted; (2) the Commissioner’s motion be denied; and (3) the matter be remanded for the sole purpose of calculating the disability insurance benefits to be awarded to Leighty. The Commissioner filed timely objections.

### Standard of Review

There are two intertwined standards of review in this matter. First, this Court applies a *de novo* review when objections are filed to a Magistrate Judge R & R. 28 U.S.C. § 636(b) (1); *United States v. Raddatz*, 447 U.S. 667, 674–75 (1980). The court may accept, reject, or modify, in whole or in part, the magistrate judge's findings or recommendations. *Id.* Second, the Social Security Act limits judicial review of disability claims to the Commissioner's final decision. 42 U.S.C. §§ 405(g). If the Commissioner's finding is supported by substantial evidence, it is conclusive and must be affirmed by the Court. 42 U.S.C. § 405(g); *Schaudeck v. Comm'n of Soc. Sec. Admin.*, 181 F.3d 429, 431 (3d Cir. 1999). Accordingly, this Court must determine *de novo* whether or not the Magistrate Judge performed a proper “substantial evidence” review.

### Discussion

The primary dispute in this case concerns myofascial pain, a condition which is capable of producing disabling pain without objectively verifiable physical manifestations. The Commissioner requests that the Court reject the R & R and uphold the ALJ's decision that Leighty is not disabled within the meaning of the Social Security Act. The Commissioner contends that the ALJ's analysis comported with the applicable regulations and is supported by substantial evidence. The Commissioner argues that the Magistrate Judge improperly reweighed the evidence and failed to address all the arguments set forth in his brief. In addition, the Commissioner contends that even if the ALJ's decision was not supported by substantial evidence, the Magistrate Judge erred by awarding benefits rather than remanding the case for further consideration.

Magistrate Judge Kelly's R & R is twenty-three (23) pages in length and is well-crafted. Magistrate Judge Kelly recites the correct "substantial evidence" standard of review. The Magistrate Judge also recognized the deference she was required to accord to the ALJ's credibility assessment. The R & R thoroughly analyzed the administrative record and the ALJ's decision. For example, the R & R pointed out that the ALJ appeared to minimize Leighty's lengthy history of pain management treatment and did not provide a thorough explanation for his conclusion that Leighty's subjective complaints of pain were not fully credible. The Magistrate Judge aptly observed that the treating physicians never accused Leighty of malingering or of exhibiting drug-seeking behavior. This Court notes that the ALJ also failed to address the fact that Leighty had purchased a Craftmatic bed in an attempt to relieve her pain, and that the ALJ's recitation of Leighty's activities of daily living (and the ALJ's conclusion that Leighty had only "mild restrictions") are not substantially supported by her testimony, as set forth in the hearing transcript. In summary, this Court agrees with the determination of Magistrate Judge Kelly.

Once a determination has been reached that the decision of the Commissioner is not based on substantial evidence, the Court has discretion to decide whether to remand for further reconsideration or to award benefits. *Rieder v. Apfel*, 115 F. Supp.2d 496, 506 (M.D. Pa. 2000) (citation omitted). The Court will adopt the Magistrate Judge's recommendation that an award of benefits is appropriate under the facts and circumstances of this case.

In conclusion, the Court will adopt the R & R as the opinion of this Court.

An appropriate Order follows.

McVerry, J.

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**ORDER OF COURT**

AND NOW, this 31<sup>st</sup> day of October, 2011, in accordance with the foregoing Memorandum Opinion, it is hereby ORDERED, ADJUDGED, AND DECREED that DEFENDANT'S OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION (Document No. 21) are **DENIED** and the October 3, 2011 Report and Recommendation is adopted as the opinion of this Court. The Commissioner's Motion for Summary Judgment (Document No. 17) is **DENIED**; Plaintiff Cynthia A. Leighty's Motion for Summary Judgment (Document No. 11) is **GRANTED**; and this matter is remanded for the sole purpose of calculating the benefits to which Leighty is entitled. The clerk will docket this case closed.

BY THE COURT:

s/Terrence F. McVerry  
United States District Judge

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